

Before Hon'ble G. S. Singhvi & M. L. Koul, JJ.

RAJINDER SINGH,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

C.W.P. No. 3448 of 1991

16th May, 1995.

Constitution of India, 1950—Arts. 226/227—Transfer—Principles of Natural Justice—Complaints against public servant—Hearing not necessary before effecting transfer.

Held, that every employer is possessed with the power to transfer his employees and exercise of this power is ordinarily not interfered by the Courts. The employer's prerogative to transfer an employee from one place to another place and even from one post to another post is well recognised. Employer in general and the public employer in particular (Government and its instrumentality) have a right to determine the suitability of every employee for a particular job and choose the place of his/her posting. It is primarily for the employer to decide as to where it can make the best use of the services of a particular employee.

(Para 10)

Further held, that in our constitutional set up, representatives of the people have also a say in the matter of posting/placement of the employees/officers. Elected representatives are entitled to make *bona fide* demands for transfer of employees officers, who do not discharge their duties in public interest.

(Para 10)

Further held, that a simple violation of the transfer policy of the administrative instruction cannot *ipso facto* result in the invalidation of the order of transfer.

(Para 11)

Further held, that the expressions 'administrative ground' and 'public interest' have not been defined but there can be no doubt that both these expressions must be liberally interpreted in the context of powers which vest in every employer to transfer its employee. Apart from the few grounds which we have indicated hereinabove, the employer may exercise the powers of transfer on the basis of complaint/adverse reports in regard to the work, conduct, behaviour etc. of the employee concerned. Such complaints

may be from superior officers, subordinates or the public at large with whom the employee may be dealing in the course of discharge of his duties. Such complaint/adverse report would certainly constitute sufficient objective material for forming a subjective opinion that retention of an employee at a particular post/place is not in the interest of public or in the interest of administration or in the interest of service. At times keeping of an employee at the place against whom complaints of serious irregularities or misbehaviour or inefficiency have been received, may be counter productive and may cause serious public injury.

(Para 12)

Further held, that a regular inquiry or the requirement of an opportunity of hearing in such like matters is not warranted because it may lead to the frustration of the very object and purpose of the exercise of power of transfer. The transfer of an employee would then be placed at par with a specified penalty, a proposition which has never been accepted by any Court.

(Para 12)

Further held, that the exercise of the power of transfer by the employer cannot be declared as illegal merely because the transfer is effected on the basis of complaint and before transferring the employee, an inquiry consistent with the principles of natural justice is not held and an opportunity of hearing is not afforded to the employee. Ordinarily, the employer is free to effect transfer on the basis of complaint or such other report after getting a verification made through some independent source about the contents of the complaint/adverse report. Even this may not be necessary in a case where the employer forms a *bona fide* opinion that retention of the employee at a particular place even for a short period will cause injury to public interest.

(Para 13)

None, for the petitioner.

Randhir Singh, AAG, Punjab, for Respondent No. 1.

H. S. Toor and Jasdeep Singh, Counsel for respondent No. 2.

Rajiv Atma Ram, counsel for Respondent No. 3.

JUDGMENT

G. S. Singhvi, J.

(1) The point which needs determination in this writ petition is whether the Government/competent authority is required to hold an inquiry or give an opportunity of hearing to an employee before effecting his transfer on the basis of a complaint.

(2) A learned Single Judge of this Court felt that the view taken by this Court in *Jagdish Chander v. State of Haryana and others* (1), and the observations made in *N. S. Bhullar v. State of Electricity Board* (2), do not represent the correct position of law. He, therefore, directed on 8th June, 1991 that this case be placed before a larger Bench and this is how the matter has come before us for decision.

(3) A brief reference to the facts of the case is essential before we express our opinion on the point enumerated in the order of the learned Single Judge. The petitioner had joined service as Trust Executive Officer Class-I and has retired with effect from 30th April, 1992 after having served various Improvement Trusts in the State of Punjab. In the year 1990, he was transferred from Improvement Trust, Ludhiana to Municipal Committee, Gurdaspur,—*vide* order dated 3rd October, 1990. That order was made subject-matter of challenge in Civil Writ Petition No. 13050 of 1990. That writ petition was allowed by a Division Bench on 12th October, 1990 and the order transferring the petitioner was quashed. At the same time the Division Bench took notice of the fact that the petitioner had been placed under suspension,—*vide* Government order dated 8th October, 1990 and, therefore, the petitioner was left free to challenge that order in separate proceedings. This the petitioner did by filing Civil Writ Petition No. 13710 of 1990. During the course of hearing of that petition, a statement was made by the learned State Government on 13th February, 1991 that the order of Consequently, the writ petition was disposed of as having become infructuous. This naturally resulted in restoration of the petitioner's position as Executive Officer, Improvement Trust, Ludhiana, where he had joined on transfer from Improvement Trust, Pathankot.

(4) After the passing of order dated 13th February, 1991 by the Division Bench of this Court, the petitioner reported for duty at Improvement Trust, Ludhiana, but he was not allowed to join. He therefore, made representation to the higher authorities for being allowed to join the duties. On 19th February, 1991, the impugned order came to be passed by the Government transferring the petitioner from Improvement Trust, Ludhiana to Improvement Trust, Patiala. At the same time, the Government upgraded the post of

(1) 1991 (1) R.S.J. 285.

(2) 1991 (1) S.L.R. 378.

Executive Officer of Improvement Trust, Patiala, from Class-II to Class-I. The petitioner challenged this order on the ground of *mala fides* and arbitrariness. He pleaded that the impugned order of transfer is against the instructions issued by the Government on 13th October, 1990 because they prohibit the transfer of an employee is to retire from service within next two years. The case of the petitioner is that the order of transfer (Annexure P-6) is against the instructions aforesaid inasmuch as it is only one year earlier that he had been transferred from Pathankot to Improvement Trust, Ludhiana, and it is only 14 months prior to his superannuation that the order in question was passed. The petitioner also contended that Improvement Trust, Patiala, is a Class-II Trust which fact would be clear from notification issued by the Local Government Department, Punjab, dated 23rd October, 1978, wherein Improvement Trust, Patiala, is mentioned at serial No. 6 and is described to be a Class-II Improvement Trust. According to the petitioner, classification of Improvement Trust, Patiala, has not been changed and to his knowledge no formal order expressed in the name of the President of India had been issued by respondent No. 1 upgrading the post of Executive Officer of Improvement Trust Patiala, from Class-II post to Class-I post.

(5) In its written statement, respondent No. 1 justified the order of transfer on the ground that there were several complaints against the petitioner from the subordinates, superior officers, Chairman of the Trust and general public regarding his misbehaviour, irregularities, lack of interest in his official work and lack of supervision and control over his subordinates and because of his confrontation with the Chairman of various Improvement Trusts and complaints he had been transferred from Amritsar, Jalandhar, Pathankot and Ludhiana. Respondent No. 1 pleaded that the transfer was made on administrative ground without any adverse impact on the conditions of the service of the petitioner.

(6) The learned Single Judge, who heard the writ petition, called for the record of the petitioner and after perusing the same observed :—

“During the course of arguments, learned counsel appearing for the respondent-Trust, on my asking had shown me the file of the petitioner containing number of complaints lodged against the petitioner by the employees of the Improvement Trust as well as the general public and even though written statement has not been filed by Improvement Trust, it was maintained by the learned counsel for

the Improvement Trust that the real reason of the petitioner to be transferred from Ludhiana to Patiala, was the anxiety of the Improvement Trust to properly conduct the enquiries against the petitioner and if the petitioner continues to be posted at Improvement Trust Ludhiana, the said enquiries would not be gone into in a proper manner for the simple reason that the petitioner still continues in the post, his suspension having been revoked, would be in a position to influence the enquiries. If this be a fact that the petitioner is facing the enquiries and number of complaints are pending against him, it *prima facie* appears to be that his retention at Improvement Trust, Ludhiana, would not be proper and the other grounds that are pressed into service for setting aside the transfer order in view of the peculiar facts of this case that number of complaints are pending against the petitioner, would pale into total insignificance. It is true that normally an employee should not be transferred from a place which is most likely to be his last place of posting before his retirement and that the reliance placed upon by the petitioner certainly points towards the desirability of not transferring an officer just at the eve of his retirement but the policy or the guidelines with whatever name they might be taken or called are not mandatory and in certain special and exceptional circumstances it is always open to an employer to transfer the employee in exigencies of service and in public interest."

(7) Learned Single Judge then considered the argument advanced by the learned counsel for the petitioner that if an order of transfer is based on complaints, the employee sought to be transferred should be heard before passing of the order of his transfer. Learned Single Judge also took notice of the decision of this Court (Single Bench) in *Jagdish Chander's* case (supra) where in another learned Single Judge held :—

"Apparently the transfer had been ordered on the basis of the complaint received by the Chief Engineer from the Superintending Engineer and inasmuch as neither the Chief Engineer nor the Superintending Engineer had given any opportunity of hearing to the petitioner nor any enquiry was held into the complaints made against the petitioner, the petitioner was punished on the basis of

the complaints without affording him any opportunity of being heard.”

(8) V. K. Bali, J. who dealt with the petitioner's case expressed his apparent disagreement with the view of the learned Single Judge in *Jagdish Chander's* case (supra) and observed :—

“In my considered view simply because there are complaints against an employee and he had not been heard prior to his transfer, the order of transfer cannot be styled to be either arbitrary, unreasonable or capricious or even based upon extraneous considerations. Giving right of hearing in my considered view, would be rather counter-productive when the complaints are of serious nature. Right of hearing in its very nature would take a considerable time because the said complaint shall have to be put to the delinquent officer to which he would have a right to reply. In the very nature of things the reply shall have to be considered and in case the reply given by the person concerned requires facts to be established, evidence shall have to be recorded. A right of hearing has not to be an empty formality and if the said right of hearing involves a lengthy procedure, which procedure in fact is already in offing by way of proceedings against the officer in a departmental inquiry then in a given case the right of hearing might go on till such time the inquiry is pending against the officer. If, therefore, we stress the right of hearing a little further and in the manner indicated above in order to test the plausibility of such right to be given or not then it necessarily involves finding of facts by the competent authority by arriving at a conclusion which in the nature of things cannot be done without recording evidence. The procedure of hearing, therefore, taken to its logical end, in my view would frustrate the very purpose of transferring officer against whom the complaints are pending and for which complaints the employee wants to make a regular inquiry. The facts of the present case would go to show that the petitioner during inquiries to be conducted against him has been reinstated and if he is permitted to be posted at the same place then the inquiry may not be an independent one particularly when the complaints are made by the subordinate of the officer involved and the public with whom he has to deal. It would be very difficult for a subordinate or for the

public to depose against an officer while he is on the job. The apex Court considered the scope of power of interference of the High Court under Article 226 of the Constitution of India in the matter of transfers in a recent judgment in *Union of India and others v. Shri H. N. Kirtania*, 1989 (3) Judgment Today 131, and observed that transfer of a public servant made on administrative ground or in public interest should not be interfered unless there are strong grounds rendering the transfer order illegal on the ground of violation of statutory rules on the ground of *mala fides*. Transfer is only an incidence of service and no one has a right to continue at a particular place of posting and it is within jurisdiction of the employer to post him wherever he chooses in the exigencies of service. The settled law on the point is that there is a limited scope for Courts to go into the administrative order of transfer and it is only if it is tainted with *mala fides* or is based upon collateral purposes or is a colourable exercise of powers stemming from *mala fides* that the Court can interfere."

(9) Bali, J. also took note of the judgment in *N. S. Bhullar's* case (supra) and commented :—

"The clear findings of Division Bench in the aforesaid cases is that the transfer orders were used for collateral purposes to avoid disciplinary proceedings. In the present case as has been enumerated above, disciplinary proceedings are not being avoided and in fact with a view to take the disciplinary proceedings to their logical end and also to vouch-safe that the same are conducted in a proper manner without any influence of the petitioner that transfer is effected. However, a reading of Division Bench Judgment in case *N. S. Bhullar* (supra) would show that the case law with regard to hearing to be provided to the delinquent officer if the transfer is on account of complaints against him was discussed but I am of the view that the aforesaid judgment was rendered on its own peculiar facts."

(10) Transfer of an employee has some times been described as a condition of service and an other times it has been described as an incident of service. In *E. P. Royappa v. State of Tamil Nadu and*

others (3), the transfer has been described as a condition of service, but in *B. Vardharajan v. State of Karnataka* (4), and in a number of other cases, transfer has been described as an incidence of service, Irrespective of this controversy about the nature of transfer, we are clear in our mind that every employer is possessed with the power to transfer his employees and exercise of this power is ordinarily not interfered by the Courts. The employer's prerogative to transfer an employee from one place to another place and even from one post to another post is well recognised. Employer in general and the public employer in particular (Government and its instrumentality) has a right to determine the suitability of every employee for a particular job and choose the place of his/her posting. It is primarily for the employer to decide as to where it can make the best use of the services of a particular employee. In our constitutional set up, representatives of the people have also a say in the matter of posting/placement of the employees/officers. Elected representatives are entitled to make *bona fide* demands for transfer of employees/officers, who do not discharge their duties in public interest. The Government can in appropriate case take cognizance of such demand while effecting transfer of an employee. The Government is also possessed with the power to effect transfer of an employee/officer from one place to another if it finds that the services of the employee/officer can be better utilized at another place. Interference by the Courts in such like matters can be made on limited grounds of patent violation of the provisions of law or *mala fides*. Of course, it will depend on the facts of each case whether the plea of *mala fides* raised by the employee for challenging his transfer has been substantiated or not. The primary burden to prove the charge of *mala fides* is always on the person who alleges the same and graver are the allegation of *mala fide* heavier is the burden to prove on the petitioner.

(11) In regard to the violation of departmental/executive instructions, which regulate transfers, it is now well settled that a simple violation of the transfer policy or the administrative instruction cannot *ipso facto* result in the invalidation of the order of transfer. This principle clearly borne from the decision of the Supreme Court in *Shilpi Bose v. State of Bihar* (5). However in a case of patent violation of transfer policy coupled with substantial allegations of *mala fides* or colourable exercise of powers may

(3) A.I.R. 1974 S.C. 555.

(4) A.I.R. 1986 S.C. 1955.

(5) A.I.R. 1991 S.C. 532.

enable the Court to call upon the Government to explain the rationale of transfer and in such case a bold plea that the transfer has been effected in public interest or on administrative ground will not be a sufficient answer. The respondents will have to show some cogent ground for deviating from the transfer policy to meet out the charge of arbitrariness.

(12) We may now advert to the issue-whether the employer is required to give a notice or an opportunity of hearing to an employee before transferring him on the basis of complaint(s). It appears from the order of the learned Single Judge that in *Jagdish Chander's case* (supra) another learned Single Judge of this Court did take the view that the transfer of Jagdish Chander was bad because no opportunity of hearing was given to the petitioner and no inquiry was held into the complaints made against the petitioner and that the petitioner could not have been punished on the basis of complaint without being afforded an opportunity of being heard. In *N. S. Bhullar's case* (supra) the Division Bench observed that the power of transfer seems to have been used for collateral purpose, namely, to avoid disciplinary proceedings. As against these decisions in *Union of India v. H. N. Kirtania* (6), their lordships of the Supreme Court have held that transfer of public servant made on administrative ground or in public interest should not be interfered unless a clear case of violation of statutory rules or *mala fides* is made out. The expressions 'administrative ground' and 'public interest' have not been defined but there can be no doubt that both these expressions must be liberally interpreted in the context of powers which vest in every employer to transfer its employee. Apart from the few grounds which we have indicated hereinabove, the employer may exercise the powers of transfer on the basis of complaint/adverse reports in regard to the work, conduct, behaviour etc. of the employee concerned. Such complaints may be from superior officers, subordinates or the public at large with whom the employee may be dealing in the course of discharge of his duties. Such complaint/adverse report would certainly constitute sufficient objective material for forming a substantive opinion that retention of an employee at a particular post/place is not in the interest of public or in the interest of administration or in the interest of service. At times keeping of an employee at the place against whom complaints of serious irregularities or mis-behaviour or inefficiency have been

received, may be counter productive and may cause serious public injury. Similarly, it may also be in the interest of the employee concerned not to be kept at a particular place where he is not in a position to pull on with his superiors or subordinates or with the public at large. Transfers on such grounds cannot *per se* be castigated as illegal on the ground of violation of principles of natural justice because none of the civil rights of the employee concerned is affected by such transfer. A regular inquiry or the requirement of an opportunity of hearing in such like matters is not warranted because it may lead to the frustration of the very object and purpose of the exercise of power of transfer. The transfer of an employee would then be placed at par with a specified penalty, a proposition which has never been accepted by any Court. We are not unmindful of the fact that at times complaints are concocted due to rivalries in the service and also due to failure of the employee to become a party to the irregularities which a political leader and at times higher authorities want to commit. We are also conscious of the fact that an honest and a straight forward official/officer can become a victim of conspiracy hatched by those who indulge in activities contrary to public interest. This can be safeguarded if a primary/bare verification of the allegations contained in the complaint received against an employee is made by his superior authority before exercise of the power of transfer. In such inquiry, it is not necessary to associate the employee concerned nor is there any necessity to call for his explanation. After receipt of the report on the verification of the contents of the complaint, the competent authority can certainly form opinion about the desirability of transfer of the employee.

(13) On the basis of the above, we hold that the exercise of the power of transfer by the employer cannot be declared as illegal merely because the transfer is effected on the basis of complaint and before transferring the employee, an inquiry consistent with the principles of natural justice is not held and an opportunity of hearing is not afforded to the employee. Ordinarily, the employer is free to effect transfer on the basis of complaint or such other report after getting a verification made through some independent source about the contents of the complaint/adverse report. Even this may not be necessary in a case where the employer forms a *bona fide* opinion that retention of the employee at a particular place even for a short period will cause injury to public interest.

(14) In so far as the petitioner is concerned, no order as necessary to be passed in his case because stands retired from service

and *qua* him the writ petition deserves to be dismissed as having become infructuous.

(15) The writ petition is dismissed subject to the above enunciation of law.

R.N.R.

Before Hon'ble V. K. Jhanji, J.

UNION OF INDIA,—*Petitioner.*

versus

HARBANS SINGH TULI & SONS AND ANOTHER,—*Respondents.*

C. R. No. 1298 of 1993 (O&M)

10th January, 1995.

Arbitration Act, 1940—Ss. 5 & 28—Code of Civil Procedure, 1908—Ss. 20(c) & 31—Territorial Jurisdiction—Accrual of cause of action—Application for extension of time to make an award filed at Chandigarh—Tender accepted at Lucknow—Work executed at Pithoragarh—Order for cancellation of the contract passed at Lucknow—No arbitration proceedings held at Chandigarh—Mere acceptance of some cheques at Chandigarh would not constitute facts giving rise to cause of action—Order of cancellation of contract conveyed at Chandigarh would not confer jurisdiction of Chandigarh Courts for extension of time—Case does not fall under Section 20(c), C.P.C.—Order of the Chandigarh Court granting extension of time to make an award is liable to be quashed for lack of territorial jurisdiction.

Held, that in the present case, even if the averments made in the application are taken as true, it cannot be said that part of cause of action arose within the jurisdiction of Chandigarh Court. The fact that the formal acceptance of tenders was communicated to the respondent at Chandigarh or some of the cheques were sent to the respondent at Chandigarh or notice regarding cancellation was received at Chandigarh by the respondent, would not confer jurisdiction on a Court at Chandigarh unless it is established that cause of action on the basis of which relief is being claimed has arisen within the territorial jurisdiction of the Court. The relief sought in the application is for extension of time for making the award. It is not in dispute that the tender was accepted at Lucknow for the work to be executed at Pithoragarh. A part of the work was executed at Pithoragarh: order for cancellation of the contract was passed at